IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.MC.No. 162 of 2007()

AGAINST THE ORDER DATED 03/01/2007 IN CMP 2614/2006 IN MC.530/2006 of FAMILY COURT, MALAPPURAM

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PETITIONER: PETITIONER/RESPONDENT

RAFEEQUE, S/O.HAMZA HAJI,
KODAPPANA HOUSE, VENNIYOOR P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SRI.JIJO PAUL
SMT.DEEPTHI S.MENON
SRI.ABRAHAM SAMSON
SMT.M.T.SHEEBA
SRI.P.A.RAJESH

RESPONDENTS: RESPONDENT/PETITIONER & STATE

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1. SAFEELA NAZRIN-MINOR,
REPRESENTED BY HER GUARDIAN- MOTHER,
SUMAYYA, D/O.ALAVI, OLLAKKAL HOUSE,
KAKKAD, MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

R1 BY ADV. SRI.S.SANAL KUMAR
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 162 of 2007

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Dated this the 23rd day of January, 2007

O R D E R

The first respondent is allegedly the daughter of the petitioner. She has staked a claim for maintenance through her mother and guardian under Section 125 Cr.P.C. The claim is now pending before the Family Court. The petitioner has disputed paternity and both sides, it is submitted, wanted the DNA test to be conducted. The mother of the claimant did not have any objection against the insistence of the petitioner that a DNA test must be conducted to remove any doubt about the paternity. The mother of the claimant agreed - whether the evidence be relevant or irrelevant - that such a test can be conducted so that harmony can be brought back into the matrimonial relationship. But the learned Judge of the Family Court, by the impugned order, did not grant the prayer.

2. The petitioner as well as the mother of the respondent/claimant have come before this Court now with a joint request that the Family Court may be directed to get the DNA test conducted so that the attempt to bring back harmony in the

matrimony can succeed. The learned counsel for the petitioner submits that the question whether the evidence will be admissible in view of the conclusive presumption under Section 112 may not stand in the day of the joint request being allowed.

3. The respondent has entered appearance thorough counsel. The counsel for the mother of the claimant child also makes a request before me that the request may be accepted and the DNA test may be got conducted.

4. In view of the joint submission made by the rival contestants, I am satisfied that there can be a direction that the Family Court shall get the DNA test conducted. In coming to this conclusion I have taken note of the request made by Adv. Sanalkumar, counsel for the respondent/claimant, who represents the mother of the child, wife of the petitioner.

5. This Crl.M.C. is hence allowed. The impugned order is set aside. The Family Court shall get the DNA test conducted completely at the expense of the petitioner herein. Whether the evidence of such test ought to be admitted in evidence or not can be considered later by the learned Judge.

(R. BASANT)
Judge

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